

SENATE BILL No. 285

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-5-1.5; IC 34-30-2-87.3.

Synopsis: Employment of unauthorized aliens. Prohibits an employer from knowingly employing, after September 30, 2016, an unauthorized alien. Authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify with the federal government the work authorization of the alleged unauthorized alien; (3) under certain conditions, notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the prosecuting attorney in the county in which an unauthorized alien is employed; and (4) maintain certain records of violation orders. Provides that a prosecuting attorney who receives notification from the attorney general may bring a civil action against an employer for knowingly employing an unauthorized alien. Prohibits the prosecuting attorney from filing an action against an employer that verifies the employment authorization of an employee through the E-Verify program. Establishes a rebuttable presumption that an employer did not knowingly employ an unauthorized alien if the employer complied in good faith with the federal employment verification requirements. Requires a court to dismiss an action against an employer under certain circumstances. Makes it a Class B misdemeanor to file a complaint with the attorney general, knowing the complaint is false or frivolous. Prohibits an employer from discharging or discriminating against an employee who takes certain actions under the employment of unauthorized alien provisions.

Effective: July 1, 2016.

Delph, Boots, Kruse

January 7, 2016, read first time and referred to Committee on Pensions & Labor.



PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 285

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]:

4 **Chapter 1.5. Employment of Unauthorized Aliens**

5 **Sec. 1. (a) This chapter applies only to an employee an employer**
6 **hires after September 30, 2016.**

7 **(b) Except as provided in subsection (c), this chapter does not**
8 **apply to the following:**

9 **(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject**
10 **to regulation by the Indiana utility regulatory commission**
11 **under IC 8-1-2.**

12 **(2) A hospital licensed under IC 16-21.**

13 **(3) A county hospital organized under IC 16-22.**

14 **(4) A municipal hospital organized under IC 16-23.**

15 **(5) A nonprofit corporation.**

16 **(6) A person that operates a business of transporting**
17 **emergency patients by ambulance or by using a**



nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).

(7) A corporation organized under IC 8-1-13.

(8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

(c) The definitions in this chapter apply to this subsection. After September 30, 2016, a person listed under subsection (b) shall verify the employment eligibility of each employee of the person through the E-Verify program after hiring the employee.

Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "employee" means an individual who provides services or labor for an employer for wages or other remuneration.

Sec. 4. (a) As used in this chapter, "employer" means a person that:

- (1) transacts business in Indiana;
- (2) has a license issued by an agency; and
- (3) employs one (1) or more individuals who perform employment services in Indiana.

(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 5. As used in this chapter, "E-Verify program" means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United States Department of Homeland Security, or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

Sec. 6. As used in this chapter, "knowingly" means knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know that an employee is unlawfully present in the United States.



1 **Sec. 7. (a) As used in this chapter, "license" means any agency**
 2 **permit, certificate, approval, registration, charter, or similar**
 3 **authorization that is:**

4 **(1) required by law; and**
 5 **(2) issued by an agency;**
 6 **for purposes of operating a business in Indiana.**

7 **(b) The term does not include an occupational or professional**
 8 **license.**

9 **Sec. 8. As used in this chapter, "person" means an individual, a**
 10 **corporation, a limited liability company, a partnership, or another**
 11 **legal entity.**

12 **Sec. 9. As used in this chapter, "unauthorized alien" has the**
 13 **meaning set forth in 8 U.S.C. 1324a(h)(3).**

14 **Sec. 10. An employer shall not knowingly employ an**
 15 **unauthorized alien.**

16 **Sec. 11. (a) The attorney general may investigate a complaint**
 17 **filed with the attorney general that an employer knowingly**
 18 **employed an unauthorized alien in violation of section 10 of this**
 19 **chapter.**

20 **(b) In investigating a complaint under subsection (a), the**
 21 **attorney general shall verify the work authorization of the alleged**
 22 **unauthorized alien with the federal government under 8 U.S.C.**
 23 **1373(c).**

24 **(c) A complaint filed with the attorney general under subsection**
 25 **(a) must be:**

26 **(1) in writing; and**
 27 **(2) signed by the individual filing the complaint.**

28 **Sec. 12. A state, county, or local official or employee may not**
 29 **attempt to make independently a final determination as to whether**
 30 **an individual is authorized to work in the United States.**

31 **Sec. 13. If, after an investigation, the attorney general**
 32 **determines that an employer has knowingly employed an**
 33 **unauthorized alien, the attorney general shall notify:**

34 **(1) the United States Immigration and Customs Enforcement;**
 35 **(2) local law enforcement agencies; and**
 36 **(3) the prosecuting attorney in the county in which the**
 37 **unauthorized alien is employed.**

38 **Sec. 14. (a) If the attorney general notifies a prosecuting**
 39 **attorney under section 13 of this chapter that an employer has**
 40 **knowingly employed an unauthorized alien, the prosecuting**
 41 **attorney may bring a civil action for a violation of section 10 of this**
 42 **chapter against the employer in the county where the unauthorized**



1 alien is employed.

2 (b) A prosecuting attorney filing an action under subsection (a)
3 may file only one (1) action against an employer relating to the
4 employment of all unauthorized aliens employed by the employer
5 at a business location of the employer at the time the prosecuting
6 attorney files the action. The prosecuting attorney may file an
7 additional action against an employer relating to the employment
8 of unauthorized aliens for each business location at which the
9 employer employs unauthorized aliens.

10 (c) The prosecuting attorney may file an additional action
11 against an employer under this section for a second or subsequent
12 violation of section 10 of this chapter only for violations allegedly
13 committed by the employer after the employer receives notice that
14 the prosecuting attorney has filed an action against the employer
15 under this section relating to the employment of unauthorized
16 aliens at a specific business location.

17 Sec. 15. If a prosecuting attorney files an action under section 14
18 of this chapter, the court in which the action is filed may hold a
19 hearing and make a determination on an expedited basis.

20 Sec. 16. Except as provided in sections 17 and 18 of this chapter,
21 if a trier of fact determines that an employer knowingly employed
22 an unauthorized alien in violation of section 10 of this chapter, the
23 court may do the following:

24 (1) Order the employer to terminate the employment of all
25 unauthorized aliens employed by the employer.

26 (2) Place the employer on probation for a three (3) year
27 period, beginning on the date of the order. During the
28 probationary period, the employer shall file a quarterly
29 report with the attorney general concerning each new
30 individual the employer hires at the specific business location
31 where the unauthorized alien worked.

32 (3) Order the employer to file a sworn affidavit signed by the
33 employer with the prosecuting attorney within thirty (30)
34 calendar days after the order is issued under subdivision (1).

35 The affidavit must include a statement that the employer:

36 (A) has terminated the employment of all unauthorized
37 aliens; and

38 (B) will not knowingly employ an unauthorized alien.

39 Sec. 17. If a trier of fact determines that an employer knowingly
40 employed an unauthorized alien in a second violation of section 10
41 of this chapter, the court may do the following:

42 (1) Order the employer to terminate the employment of all



1 unauthorized aliens employed by the employer.

2 (2) Place the employer on probation for a ten (10) year period,
3 beginning on the date of the order. During the probationary
4 period, the employer shall file a quarterly report with the
5 attorney general concerning each new individual the employer
6 hires at the specific business location where the unauthorized
7 alien worked.

8 (3) Order the employer to file a sworn affidavit signed by the
9 employer with the prosecuting attorney within thirty (30)
10 calendar days after the order is issued under subdivision (1).
11 The affidavit must include a statement that the employer:

12 (A) has terminated the employment of all unauthorized
13 aliens; and

14 (B) will not knowingly employ an unauthorized alien.

15 Sec. 18. If a trier of fact determines that an employer knowingly
16 employed an unauthorized alien in a third violation of section 10 of
17 this chapter, the court may order the appropriate agencies to
18 revoke the employer's license or licenses for a period determined
19 by the court or permanently revoke all licenses held by the
20 employer that are described in section 19(a) of this chapter.

21 Sec. 19. (a) This section applies to all licenses held by an
22 employer:

23 (1) that are necessary to operate the employer's business at
24 the employer's business location where an unauthorized alien
25 worked; or

26 (2) if a license is not necessary at the employer's business
27 location described in subdivision (1), that are held by the
28 employer for the employer's primary place of business.

29 (b) If an employer fails to file a sworn affidavit required under
30 section 16(3) or 17(3) of this chapter with the prosecuting attorney
31 within thirty (30) business days after the order requiring the filing
32 of the affidavit is issued, the court may order the appropriate
33 agencies to suspend all licenses that are held by the employer. All
34 licenses suspended under this subsection may remain suspended
35 until the employer files a sworn affidavit with the prosecuting
36 attorney, as required under section 16(3) or 17(3) of this chapter.

37 (c) If the employer subject to an order filed under subsection (b)
38 files a sworn affidavit required under section 16(3) or 17(3) of this
39 chapter, the court may order the appropriate agencies to reinstate
40 the employer's suspended licenses.

41 Sec. 20. A court may consider the following factors, if
42 applicable, in deciding whether to order an agency to revoke an



1 employer's license or licenses for a period determined by the court,
 2 or permanently revoke an employer's license under section 18 of
 3 this chapter:

4 (1) The number of unauthorized aliens employed by the
 5 employer.

6 (2) Any prior misconduct by the employer.

7 (3) The degree of harm resulting from the violation of this
 8 chapter.

9 (4) The extent to which the employer made good faith efforts
 10 to comply with any applicable requirements under this
 11 chapter.

12 (5) The duration of the violation of this chapter.

13 (6) The role of the directors, officers, or agents of the
 14 employer in the violation of this chapter.

15 (7) Any other factors the court considers relevant.

16 Sec. 21. (a) If an agency receives an order from a court under
 17 section 19(b) of this chapter, the agency shall immediately suspend
 18 the license or licenses described in section 19(a) of this chapter that
 19 are held by the employer to which the order relates.

20 (b) If an agency receives an order from a court under section 18
 21 of this chapter, the agency shall immediately revoke the license or
 22 licenses described in section 19(a) of this chapter that are held by
 23 the employer to which the order relates.

24 Sec. 22. A court shall send copies of all orders issued under
 25 sections 16, 17, 18, and 19 of this chapter to the attorney general.

26 Sec. 23. (a) In determining whether an individual is an
 27 unauthorized alien for purposes of this chapter, a court may
 28 consider only the federal government's verification or status
 29 information provided under 8 U.S.C. 1373(c).

30 (b) The federal government's verification or status information
 31 provided under 8 U.S.C. 1373(c) creates a rebuttable presumption
 32 of an individual's lawful status.

33 (c) The court may:

34 (1) take judicial notice of the federal government's
 35 verification or status information; and

36 (2) request the federal government to provide automated or
 37 testimonial verification under 8 U.S.C. 1373(c).

38 Sec. 24. A prosecuting attorney may not file an action against an
 39 employer under section 14 of this chapter for knowingly employing
 40 an unauthorized alien if the employer verified the employment
 41 authorization of the employed individual through the E-Verify
 42 program.



1 **Sec. 25.** There is a rebuttable presumption that an employer did
 2 not knowingly employ an unauthorized alien in violation of section
 3 **10** of this chapter if the employer complied in good faith with the
 4 requirements of 8 U.S.C. 1324a(b).

5 **Sec. 26.** A court shall dismiss an action against an employer filed
 6 under section 14 of this chapter for knowingly employing an
 7 unauthorized alien if the employer establishes:

8 (1) that the employee performed agricultural labor or
 9 provided services of a temporary or seasonal nature as
 10 described in:

11 (A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or

12 (B) 8 U.S.C. 1101 (a)(15)(H)(ii)(b); and

13 (2) that the employer has complied in good faith with all
 14 federal laws and regulations governing the foreign worker
 15 program described in:

16 (A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or

17 (B) 8 U.S.C. 1101(a)(15)(H)(ii)(b).

18 **Sec. 27.** The attorney general shall:

19 (1) maintain copies of orders received under section 22 of this
 20 chapter;

21 (2) make the orders available on the attorney general's
 22 Internet web site; and

23 (3) establish and maintain a data base of the names and
 24 addresses of the employers that have a violation under this
 25 chapter.

26 **Sec. 28.** This chapter does not require an employer to take any
 27 action that the employer believes in good faith would violate
 28 federal law.

29 **Sec. 29.** A person who files a complaint with the attorney
 30 general or the department of labor under this chapter, knowing
 31 that the complaint is false or frivolous, commits a Class B
 32 misdemeanor.

33 **Sec. 30. (a)** An employer may not discharge an employee or in
 34 any way discriminate against any employee because the employee:

35 (1) has filed a complaint or instituted or caused to be
 36 instituted any proceeding under or related to this chapter;

37 (2) has testified or is about to testify in any proceeding under
 38 this chapter; or

39 (3) exercised on behalf of the employee or others any right
 40 afforded by this chapter.

41 **(b)** Any employee who believes that the employee has been
 42 discharged or otherwise discriminated against by any person in



1 violation of this section may, within thirty (30) calendar days after
 2 the violation occurs, file a complaint with the commissioner of
 3 labor alleging the discrimination.

4 (c) Upon receipt of a complaint under subsection (b), the
 5 commissioner of labor shall investigate as the commissioner of
 6 labor considers appropriate.

7 (d) If, after an investigation, the commissioner of labor
 8 determines that this section has been violated, the commissioner of
 9 labor, through the attorney general, shall, not later than one
 10 hundred twenty (120) days after receipt of the complaint under
 11 subsection (b), bring an action in a circuit court.

12 (e) A circuit court has jurisdiction to restrain violations of this
 13 section and order all appropriate relief, including rehiring or
 14 reinstatement, of the employee to the employee's former position
 15 with back pay, after taking into account any interim earnings of
 16 the employee.

17 (f) Not later than ninety (90) days after the receipt of a
 18 complaint filed under this section, the commissioner of labor shall
 19 notify the complainant in writing of a determination under this
 20 section.

21 **Sec. 31. The suspension or revocation of a license under this**
 22 **chapter does not relieve an employer from an obligation to**
 23 **withhold, collect, or pay income tax on wages paid by the employer**
 24 **to an employee.**

25 **Sec. 32. This chapter shall be enforced without regard to race or**
 26 **national origin.**

27 SECTION 2. IC 34-30-2-87.3 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2016]: **Sec. 87.3. IC 22-5-1.5-24 (Concerning**
 30 **certain employers that employ unauthorized aliens).**

